IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number 99-11854
SHARON L. JORDAN	)	
	)	
Debtor	)	
	)	
	)	FILED
SYSTEMS & SERVICES TECHNOLOGIES INC.,SERVICING AGENT FOR AEGIS AUTO FINANCE,	)	at 3 O'clock & 39 min. P.M. Date: 9-27-00
	)	
Objecting Creditor	)	
	)	
v.	)	
	)	
SHARON L. JORDAN, Debtor, BARNEE C. BAXTER, CHAPTER 13 Trustee and STATE OF GEORGIA DEPARTMENT OF HUMAN RESOURCES CHILD SUPPORT ENFORCEMENT DIVISION, Creditor	)	
	)	
Respondents	)	

ORDER

The debtor, Sharon Laverne Jordan ("Debtor") filed a Chapter 13 petition on August 3, 1999. The Division of Child Support Enforcement for the State of Georgia Department of Human Resources ("Division") filed a proof of claim in the amount of

$5,423.14 claiming priority status under 11 U.S.C. §507(a) for child support arrears for the Debtor's child. Systems & Services Technologies, Inc. ("Movant"), another creditor, filed an objection to the Division's proof of claim. Movant objects to the priority status of the claim arguing that the claim as been assigned to the Division by operation of law and has thereby lost its priority status. The objection is sustained.

The issue presented is whether an assignment to the Division has occurred under O.C.G.A. §19-11-6 so as to render the claim unsecured nonpriority pursuant to 11 U.S.C. § 507(a)(7)(A). The Court has jurisdiction to hear this matter as a core bankruptcy proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (L) & (O) and 28 U.S.C. § 1334. Regarding the burden of proof,

> 11 U.S.C. §502(a) and Bankruptcy 3001(f) provide that the filing of a proof of claim is prima facie evidence that a creditor's claim is valid. The . . . [objector] . . . then must produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, the burden of ultimate persuasion rests with the claimant. (citations omitted.)

In re VTN, Inc., 69 B.R. 1005, 1008 (Bankr. S.D. Fla. 1987).

The pertinent statute, 11 U.S.C. §507(a)(7), states:

> The following expenses and claims have priority in the following order...

> (7),Seventh allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to , maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt-
> *(A) is assigned to another entity, voluntarily, by operation of law or otherwise*. (Emphasis added).

If the child support claim was assigned to the Division it would fall within the §507(a)(7)(A) exception to priority status.

Georgia law determines whether an assignment has been made. O.C.G.A. §19-11-6(a) provides "[b]y accepting public assistance for or on behalf of a child or children...the recipient shall *be deemed to have made an assignment* to the department of the right to any child support owed for the child". If the Debtor's child received public assistance then an assignment has taken place by operation of law.

The Division argues there is no evidence presented that an assignment has occurred. The Division cites In re Maiten, 225 B.R. 246 (Bankr. M.D. Fl. 1998) in support of its position that the Movant must show evidence of an assignment or the objection fails. In Maiten, the court applied a Florida statute similar to O.C.G.A. §19-11-6(a) that deems an assignment to the state upon receipt of

public assistance. The Maiten court stated that no proof of public assistance had been offered i.e. the objector failed to produce evidence equivalent in probative value to overcome the presumption of validity of the claim as filed. 225 B.R. at 248. However, in this case, at least in part, the proof of claim itself establishes that the debt due was for reimbursement of public assistance. Attached to the proof of claim is a copy of a consent order entered in the Superior Court of Richmond County, Georgia October 7, 1985 which states in part pertinent here.

> 5. The parties to this Action agree that the Court finds as a matter of law pursuant to 42 U.S.C. §§ 601 and 656 and to O.C.O.G. §§ 19-11-5, 19-11-6, 19-11-7, that the Petitioner Georgia Department of Human Resources is subrogated to, and substituted for, the claims of Josephine S. Jordan for the child support of the above named children for all past and future payments thereof; and, therefore, Petitioner Georgia Department of Human Resources shall have separate and further judgment against Respondent in the amount of $5,576.00 *as reimbursement for the public assistance or welfare monies previously paid* on behalf of (his) (her) above named child(ren) and the custodian of said child(ren). (Emphasis added)

If O.C.G.A. §19-11-6(a) was the only relevant statute and there was no evidence offered that the amount claimed was at least in part sought by the Division to reimburse the State of Georgia for public assistance, then Maiten would be persuasive. However, O.C.G.A. §19-

11-6(c) provides that "(t)he department shall accept applications for child support enforcement services from any proper party or person notwithstanding the fact that the child or children do not receive public assistance. *When made the application to the department shall constitute an assignment of the right to support to the department*..." Therefore under Georgia law an assignment is made to the state whenever public assistance is extended or when the enforcement services are being utilized. An assignment occurred by operation of law when the Division undertook to collect monies from the Debtor.

The Division further argues that since child support claims are not dischargeable that they are to be accorded priority status. 11 U.S.C. §523(a)(5)[1]. Section 507(a)(7) makes no special

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[1]11 U.S.C. §523(a)(5) provides:

(a) A discharge under section 727, 1141,1228(a) 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–

. . .

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that–

(A) such debt is assigned to another entity,

category for debts that are possibly nondischargeable[2]. Furthermore, there is nothing inconsistent with 11 U.S.C. §523(a)(5) for a debt to be nondischargeable and also nonpriority. In re Parker, No. 98-B-15184, 1999 WL1116825, at *4 (Bankr. N.D. Ill. Dec. 7, 1999); See,e.g., In re Chapman, 146 B.R.411 (Bankr. N.D. Ill. 1992)(illustrating nondischargeable student loans as nonpriority claims).

Some courts have concluded that, when an assignment is made to a governmental agency the claims retains priority status when §507(a)(7) is read in conjunction with §523(a)(5)(A). Section 523(a)(5) tracks the language of §507(a)(7) except that §507(a)(7)(A) does not contain the exception indicated in parentheticals in 523(a)(5)(A) as follows:

> "(other than debts assigned pursuant to §408(a)(3) of the Social Security Act, or any

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voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support. . . .

[2]The dischargeabilty of the debt is not at issue here.

debt which has been assigned to the federal government, or to a state, or any political subdivision of such state)."

In the case of In re Beverly,196 B.R. 128 (Bankr. M.D. Mo. 1996), the court found that the omission in §507(a)(7) of the exception to the exception contained in §523(a)(5)(A) for assignments to governmental agencies is "in effect meaningless when it is read harmoniously with §523(a)(5)(A) and the judicial interpretation of that section." 196 B.R. at 132. The Beverly court reasons that public policy favors special treatment of child support claims and therefore the exception in §523 should be read into §507. 196 B.R. at 130. In more recent cases the Beverly analysis has been criticized concluding that if Congress wanted priority status to be accorded to support claims assigned to a governmental agency Congress would have done so. Parker, No. 98-B-15184, 1999 WL1116825, at *4 (Bankr. N.D. Ill. Dec. 7, 1999); In re: Burns,216 B.R. 945, 947 (Bankr. S.D. Cal. 1998). The language of O.C.G.A. §19-11-6 and 11 U.S.C. §507(a)(7)(A) is plain and not subject to interpretation. See U.S. v. Ron Pair Enter., 489 U.S. 235 (1989). The reasoning in Parker and Burns is persuasive.

It is, therefore, ORDERED that the objection to claim filed by Child Support Enforcement Division on behalf of the State

of Georgia Department of Human Resources is sustained. The claim in the amount of $5,423.17 is allowed as general unsecured.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 27th day of September, 2000.